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ACT-176

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OFFICE OF PETITIONS

In re Application of
David W. Sherrer; John Fisher and
Daniel A. Steinberg
Application No. 10/022,726
Filed: December 20, 2001
For: OPTICAL SWITCH ASSEMBLY WITH
FLEX PLATE AND METHOD FOR MAKING

:
:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:

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OFFICE OF PETITIONS

This is in response to the "Petition Under 37 CFR 1.47(a)," filed September 4, 2002 (certificate of mailing date: August 28, 2002)

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 20, 2001 without an executed oath or declaration and naming David W. Sherrer; John Fisher and Daniel A. Steinberg as joint inventors.

Accordingly, on January 28, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

In response, on September 4, 2002 (certificate of mailing date: August 28, 2002), the instant petition, request for a five (5) month extension of time, a

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copy of an email from joint inventor David Sherrer that indicates the non-signing inventor's refusal to sign the Declaration and surcharge were filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks items (1), (2) and (4), as set forth above.

As to item (1), applicant appears to demonstrate that Mr. Steinberg was only presented with the declaration. Unless Mr. Steinberg was presented with a copy of the application papers (specification, claims and drawings), Mr. Steinberg could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration. See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to, or refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events of any refusal should be made by a statement of someone with first hand knowledge of the refusal.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration does not set forth:

- A signature block for non-signing inventor Daniel A. Steinberg that includes the required information for Mr. Steinberg.

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An oath or declaration in compliance with 37 CFR 1.63 and 1.64 is REQUIRED. See MPEP 409.03(a).

As to item (4), a statement of the inventor's last known address is missing and is required.

Fees totaling \$130.00 for the petition fee have been charged to Applicant's deposit account no. 50-0369.

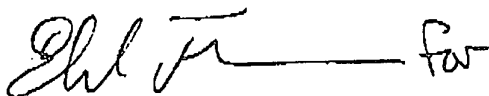
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
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Telephone inquiries related to this decision should be directed to Petitions Attorney Edward Tannouse at (703) 306-9200.



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for Patent Examination Policy